IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL Nos. 92 of 1997, 93 of 1997

with

CRIMINAL APPEAL No 410 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHBHAI CHHAGANJI THAKORE

Appearance:

1. Criminal Appeal No. 92 of 1997

MR. I.M. PANDYA, APP, for the appellant
NOTICE SERVED for Respondent No. 1

2. Criminal Appeal No. 93 of 1997

MR. I.M. PANDYA, APP, for the appellant
NOTICE SERVED for Respondent No. 1

3. Criminal Appeal No. 410 of 1997

Mr. M.A. Bukhari for Mr. M.H. Barejia for the appellant
MR. I.M. Pandya, learned APP, for the respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 13/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

1. The accused Rameshbhai Chhaganbhai Thakore of Sessions Case No. 61 of 1996 was tried for committing the murder of his wife Shardaben. The learned Additional City Sessions Judge, Ahmedabad, by his judgement and order dated 27.11.1996 held that the prosecution has failed to establish the charge under Section 302 of the I.P.C. against the accused. He however has convicted the accused for the offence punishable under Section 304 Part II of the I.P.C. and sentenced him to suffer four years' rigorous imprisonment and fine of Rs. 1000/- and in default to further undergo further rigorous imprisonment for two months.

2. The State of Gujarat has filed Criminal Appeal No. 92 of 1997 for enhancement of sentence. Likewise Criminal Appeal No. 93 of 1997 is also filed by the State challenging the order of acquittal of the accused under Section 302 of the I.P.C.

3. The accused Rameshbhai Chhaganbhai Thakore has also filed appeal being Criminal Appeal No. 410 of 1997 wherein he has challenged the order of conviction passed against him for the offence punishable under Section 304 Part II of the I.P.C.

4. All the appeals are heard together and disposed of by this common judgement.

5. The facts giving rise to the present case are as under:

5.1 Accused has married to Shardaben (deceased) on 10.10.1991. On 9.11.1995 the accused at about 5.30 p.m. had gone to the residence of complainant Jagalben, who is mother-in-law of the accused to call his wife Shardaben. The accused also asked the complainant Jagalben to give

ornaments of his wife. The accused asked one Harjeet Exh. 16, a close friend of Shardaben and a neighbour of Jagalben, to stay with them for some days. Harjeet agreed to that suggestion. Accordingly, all three left at 9.00 p.m. for Khodiyarnagar where the accused was residing. It is the case of the prosecution that on next day i.e. 10.11.1995 at about 6.30 p.m. one Manguben Sardarji, resident of Isanpur Viratnagar and sister-in-law of the complainant apprised the complainant that her daughter has received burn injuries at the place of her husband and she has been admitted in the V.S. Hospital. On hearing the same, the complainant at late night, along with said Manguben Sardarji went to the V.S. Hospital. However, as she could not find ward, both the complainant and her sister-in-law went back to Kaligam and again at about 8.00 a.m. on 11.11.1995 along with her sister-in-law the complainant went to V.S. Hospital to enquire about Shardaben. One Bhanuben Kanubhai, wife of the brother of the accused met them and she apprised that Shardaben had died and upon hearing the same, the complainant and said Manguben went to the mortuary in the V.S. Hospital and found out the dead body of Shardaben containing severe burn injuries. After post-mortem of the dead body, the complainant took the dead body to her residence and after funeral rituals at 5.30 p.m. on 11.11.1995, Harjeetben narrated the incidence of burns to the deceased Shardaben by her husband, who poured kerosene upon her body and set her ablaze and at that time the husband of the victim sustained injuries on his hands and stomach while making an effort to save the victim and Harjeetben also extinguished the fire by pouring water from the clay pot and thereafter the neighbours took Shardaben to V.S. Hospital and Bhanuben Kanubhai took Harjeetben to her parent's place at Isanpur. Thereafter, the complaint came to be lodged against the accused appellant at Danilimda Police Station, Ahmedabad, for the offences punishable under Section 302 of the I.P.C.

5.2 Charge Exh. 2 was framed against the accused. The accused pleaded not guilty to the charges.

5.3 After appreciating the evidence on record, as observed earlier, the learned trial Judge held that the accused has committed offence under Section 304 Part II and not under Section 302 of the I.P.C.

6. We have heard Mr. Bukhari, learned advocate for Mr. Bareja for the appellant and Mr. Pandya, learned A.P.P. for the State. After having gone through the entire evidence on record to which our attention is

invited, it is clear that the deceased Shardaben died due to burn injuries sustained by her. Dr. Dilip Desai at Exh. 33 who has performed the post-mortem has found burn injuries on almost entire parts of the body. The details whereof have been given in the post-mortem report at Exh. 10. The cause of death of the deceased, according to Dr. Desai, was shock as a result of burns. It is not in dispute that the accused poured kerosene on the deceased and set her ablaze by throwing a lighted match-stick. Harjeet Ramsinh, PW-2, Exh. 16, who is an eye witness has given details about the incident in her evidence. She accompanied the accused and the deceased and had gone to their house on the night of 9.11.1995. According to her on the next day i.e. on 10.11.1995 the accused had come with a small plastic bag containing liquor. The deceased Shardaben told the accused as to why he has brought the liquor especially when Harjeet had come. She tore the plastic bag. The accused got excited and started quarrel. The accused told that she caused loss of Rs. 10/- by her act. Thereafter, he took out carbo containing kerosene and poured kerosene on her. He threw lighted match-stick and set her ablaze. The deceased Shardaben put on nylon saree and therefore she sustained burn injuries on her hands and stomach. The accused has thereafter removed her saree. Shardaben started running out of the house. This witness (Harjeet) also threw water on her from pot. The fire was extinguished. The accused called ambulance van and Shardaben was removed to the hospital. The wife of the elder brother of the accused took this witness to her house at Isanpur. Again both of them had gone to Khodiyarnagar to enquire about the condition of Shardaben. At that time, the accused had met her. He told her to inform the police that Shardaben sustained burn injuries while boiling milk as he has also informed the police accordingly. This witness has not given the statement as suggested by the accused. In the cross-examination she has denied the suggestion that she has not accompanied the accused and the deceased at their residence. She has admitted that when Shardaben started running after sustaining burn injuries, the accused had tried to remove her saree and thereby tried to extinguish the fire. She has also admitted that when she poured water on deceased the accused also threw mattress on the deceased to save her. She has also admitted that when the deceased tore the plastic bag containing liquor the accused got excited and by raising voice told that she caused loss of Rs. 10/-.

7. Having minutely examined the evidence of this witness, we are of the view that this witness Harjeet has given evidence in a very natural way and the same is

reliable. Her presence at the time of the offence cannot be disputed. She has also narrated the entire incident in the manner in which it had taken place. From her evidence it is very clear that the incident had taken place all of a sudden. The accused entered the house with a plastic bag containing liquor which Shardaben did not like and for such trifle matter the incident had taken place. It aggravated when the deceased tore the plastic bag. We in a lighter way, say that no drunkard could have tolerated the said act. The accused could not control himself by the act of the deceased. He therefore set Shardaben ablaze. Immediately, thereafter he realized the seriousness of his misdeed. He tried to extinguish the fire by removing saree put on by the deceased. Not only that, he threw mattress on her and thereby extinguished the fire. He also sustained burn injuries. From these facts, the accused cannot be convicted for committing murder of the deceased. The learned trial judge has rightly convicted the accused for the offence punishable under Section 304 Part II of the I.P.C. The learned judge in paragraph 18 of the judgement while recording the concession of the Public Prosecutor has observed that the incident had taken place all of a sudden, there was no intention of the accused to commit murder. From the evidence of the complainant Jagalben it is clear that the accused on the previous night after taking milk at the house of the complainant, had gone with the deceased to his residence and the complainant has also not alleged that the accused used to harass the deceased in the past and wanted to commit murder. Needless to say that we are in agreement with the reasoning of the learned trial judge. There is no substance in any of the appeals. We, therefore, dismiss all the three appeals and confirm judgement and order of conviction passed by the learned trial judge.

8. In view of the same, Criminal Appeal Nos. 92 of 1997 and 93 of 1997 filed by the State fail and are dismissed. Criminal Appeal No. 410 of 1997 filed by the accused also fails and is dismissed.

(K.R. VYAS, J)

(K.M. MEHTA, J)

(pkn)